

SEP 21 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OREGON NATURAL DESERT
ASSOCIATION; et al.,

Plaintiffs - Appellants,

v.

UNITED STATES FOREST SERVICE; et
al.,

Defendants - Appellees,

OREGON CATTLEMEN'S
ASSOCIATION,

Defendant-intervenor - Appellee,

DAYVILLE GRAZING ASSOCIATION,
on behalf of its members Bob Chouinard,
Chett Hettinga, Peter Hettinga, Stan
Harlan, Lee Schrier, Todd Smith, Piper
Stout, Harry Stangel, a grazing permittee
as an individual and Russell Rico, a
grazing permittee as an individual,

Defendant-intervenor - Appellee.

No. 05-35689

D.C. No. CV-03-00381-ALH

MEMORANDUM^{*}

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the District of Oregon
Ancer L. Haggerty, District Judge, Presiding

Argued and Submitted March 7, 2006
Portland, Oregon

Before: FERNANDEZ, TASHIMA, and PAEZ, Circuit Judges.

Oregon Natural Desert Association and Center for Biological Diversity (together, “ONDA”) appeal the district court’s dismissal of their action challenging the United States Forest Service’s management of livestock grazing on national forest lands in the Blue Mountains of eastern Oregon. The district court dismissed ONDA’s action on the ground that it lacked jurisdiction to review ONDA’s claims under Section 10(e) of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A), because the challenged Annual Operating Instructions (“AOIs”) did not constitute a final agency action within the meaning of 5 U.S.C. § 704. We review *de novo* the district court’s determination that it lacked subject matter jurisdiction. *Hambleton Bros. Lumber Co. v. Balkin Enters., Inc.*, 397 F.3d 1217, 1226 (9th Cir. 2005), and we reverse.

Concurrent with the filing of this memorandum, we filed an opinion in *Oregon Natural Desert Association v. United States Forest Service*, No. 05-35637

(“*ONDA*”), which disposes of the jurisdictional argument at issue in this appeal. In *ONDA*, we held that the Forest Service’s issuance of AOIs to grazing permit holders constituted final agency action under § 704 and therefore that *ONDA*’s action was ripe for judicial review. Accordingly, in the present case, the district court erred in dismissing *ONDA*’s § 706(2)(A) claims for lack of subject matter jurisdiction.

REVERSED AND REMANDED.